

United States
Circuit Court of Appeals

For the Ninth Circuit.

ETHLYN B. CLEMENTS, individually and as Ad-
ministratrix of the estate of Ralph L. Clements,
also known as R. L. Clements, deceased,
Appellant,

vs.

GEORGE W. COPPIN, as trustee in Bankruptcy
of the estate of the Flintex Corporation, a
corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.

Filed

FEB 16 1934

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco, Calif.

Attorneys for Appellee.

In the Southern Division of the United States
District Court for the Northern
District of California.

No. 1874 IN EQUITY.

GEO. W. COPPIN as trustee in bankruptcy of the
FLINTEX CORPORATION, a corporation,
Plaintiff,

vs.

ETHLYN B. CLEMENTS, individually and as
Administratrix of the estate of Ralph L.
Clements, also known as R. L. Clements, de-
ceased,

Defendant.

INTERLOCUTORY ORDER DIRECTING THE
DEFENDANT TO PAY OVER TO THE
COURT THE SUM OF \$16,784.20 BELONG-
ING TO THE FLINTEX CORPORATION,
BANKRUPT.

This cause came on regularly to be heard this
day of May, 1933, upon the report of W. E.

TUCKER, as Special Master, to whom it was referred, to take and state an account of certain trust funds passing into the hands of the defendant, ETHLYN B. CLEMENTS, both individually and as the administratrix of the estate of RALPH L. CLEMENTS, deceased, pursuant to the Interlocutory Decree herein, which report found that twenty-two thousand five hundred dollars (\$22,500.00) of said trust funds passed into her hands individually and seven thousand two hundred fifty-nine and 12/100 (\$7,259.12) dollars passed into her hands as administratrix of said estate, and said Report further found that eleven thousand nine hundred seventy-nine (\$11,979.00) dollars of said twenty-two thousand five hundred (\$22,500.00) dollars and four thousand eight hundred five and 20/100 (\$4,805.20) dollars of said sum of seven thousand [1*] two hundred fifty-nine and 12/100 (\$7259.12) dollars are now in her possession and control; and it appearing that no exceptions were filed to the Report of said Special Master within the time allowed by law, or at all; and it further appearing that the Report of said Special Master is in all respects true and correct,

IT IS ORDERED, that the report of W. E. TUCKER, as such Special Master be, and the same is hereby allowed and confirmed.

IT IS FURTHER ORDERED, that defendant, ETHLYN B. CLEMENTS, pay into the hands of the Clerk of this Court, subject to the further order of this court, said sum of eleven thousand nine hun-

*Page numbering appearing at the foot of page of original certified Transcript of Record.

dred seventy-nine dollars (\$11,979.00) and four thousand eight hundred five and 20/100 (\$4,805.20), dollars respectively, belonging to the estate of said bankrupt, THE FLINTEX CORPORATION, now in the possession and under the control of said defendant, within 10 days from the date of service hereof, and that jurisdiction is retained by this court to make such further orders and/or decrees as may be meet and proper.

Dated: May 22nd, 1933.

FRANK H. KERRIGAN,
United States District Judge.

[Endorsed]: Filed May 22, 1933. [2]

[Title of Court and Cause.]

ANSWER OF ETHLYN B. CLEMENTS TO
ORDER OF MAY 22, 1933.

Now comes Ethlyn B. Clements, defendant in the above-entitled action, and answers the order of the Court, herein, dated May 22, 1933, directing her to pay certain funds to the Clerk of said Court, as follows:

I.

Defendant denies that she has, individually or as administratrix of the Estate of Ralph L. Clements, deceased, in her possession, or under her control, the sums of \$11,979.00 and \$4805.20, mentioned in said order, or any portion of either of said sums.

WHEREFORE, defendant states that she is unable to comply with said order of May 22, 1933.

C. G. ATWOOD,
Attorney for Defendant. [3]

State of California

City and County of San Francisco—ss.

ETHLYN B. CLEMENTS, being first duly sworn, deposes and says:

That she is the defendant in the above entitled case; That she has read the foregoing answer to order of May 22, 1933, and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated upon information and/or belief, and as to those matters that she believes it to be true.

ETHLYN B. CLEMENTS.

Subscribed and sworn to before me this 3rd day of June, 1933.

(Seal)

AGNES M. COLE,
Notary Public, in and for the City
and County of San Francisco,
State of California.

Receipt of copy of the within answer is hereby acknowledged this 3rd day of June, 1933.

DINKELSPIEL & DINKELSPIEL.

[Endorsed]: Filed Jun 3, 1933. [4]

[Title of Court and Cause.]

AFFIDAVIT IN SUPPORT OF ORDER TO
SHOW CAUSE WHY DEFENDANT
SHOULD NOT BE ADJUDGED
GUILTY OF CONTEMPT.

State of California

City and County of San Francisco—ss.

Martin J. Dinkelspiel, being duly sworn deposes and says: That he is one of the attorneys for the plaintiff above named, and that he makes this affidavit for and on behalf of said plaintiff for the reason that said plaintiff resides beyond the boundaries of the State of California, to-wit; in the State of Ohio, and that said plaintiff is absent from the State of California, and for the further reason that your affiant is more conversant with the facts herein averred than said plaintiff.

Your affiant avers that on the 22nd day of May, 1933, this court made and filed an interlocutory order herein, a copy of which is annexed hereto as Exhibit "A" and made a part hereof, and in which the defendant above named was ordered and commanded by this court to pay to the Clerk of said Court certain trust funds more specifically in said order set forth within ten (10) days from the service of a copy of said order upon said defendant; that affiant is informed and believes and therefore avers that a copy of said order commanding and directing said defendant to pay over said trust funds to said Clerk was served upon the defendant, Ethlyn B. Clements, on the 24th day of May, 1933,

by the office of the United States Marshal for this district, as appears by a return thereof made and filed by said United States Marshal with the Clerk of this Court.

That affiant is further informed by the Clerk of the [5] above entitled court, and believes and therefore avers, that said defendant, Ethlyn B. Clements, has disobeyed said order of this Court and has failed and refused to pay over or to deposit with said Clerk said trust funds or any part thereof; that more than ten (10) days have elapsed since the service of said order upon said defendant.

WHEREFORE, plaintiff prays that an order to show cause be issued by this Court directing the defendant to appear before said Court upon a day certain to show cause why she should not be adjudged guilty of contempt for her failure and refusal to observe and perform the commands of said order directing her to pay over to the Clerk hereof said trust funds.

MARTIN DINKELSPIEL.

Subscribed and sworn to before me this 7th day of June, 1933.

[Seal]

MARK E. LEVY

Notary Public in and for the City and County of San Francisco, State of California. [6]

[Title of Court and Cause.]

INTERLOCUTORY ORDER DIRECTING THE
DEFENDANT TO PAY OVER TO THE
COURT THE SUM OF \$16,784.20 BELONG-
ING TO THE FLINTEX CORPORATION,
BANKRUPT.

This cause came on regularly to be heard this.....
day of May, 1933, upon the report of W. E.
TUCKER, as Special Master, to whom it was re-
ferred, to take and state an account of certain trust
funds passing into the hands of the defendant
ETHLYN B. CLEMENTS, both individually and
as the administratrix of the estate of RALPH L.
CLEMENTS, deceased, pursuant to the Interloc-
utory Decree herein, which report found that twenty
two thousand five hundred dollars (\$2,500.00) of
said trust funds passed into her hands individually
and seven thousand two hundred fifty nine and
12/100 (\$7,259.12) dollars passed into her hands as
administratrix of said estate, and said Report fur-
ther found that eleven thousand nine hundred sev-
enty nine (\$11,979.00) dollars of said twenty two
thousand five hundred (\$22,500.00) dollars and four
thousand eight hundred five and 20/100 (\$4,805.00)
dollars of said sum of seven thousand [7] two
hundred fifty nine and 12/100 (\$7259.12) dollars
are now in her possession and control; and it ap-
pearing that no exceptions were filed to the Report
of said Special Master within the time allowed
by law, or at all; and it further appearing that the
Report of said Special Master is in all respects true
and correct,

IT IS ORDERED, that the report of W. E. TUCKER, as such Special Master be, and the same is hereby allowed and confirmed.

IT IS FURTHER ORDERED, that defendant, ETHLYN B. CLEMENTS, pay into the hands of the Clerk of this Court, subject to the further order of this court, said sum of eleven thousand nine hundred seventy nine dollars (\$11,979.00) and four thousand eight hundred five and 20/100 (\$4,805.20), dollars respectively, belonging to the estate of said bankrupt, THE FLINTEX CORPORATION, now in the possession and under the control of said defendant, within 10 days from the date of service hereof, and that jurisdiction is retained by this court to make such further orders and/or decrees as may be meet and proper.

Dated: May 22nd 1933.

FRANK H. KERRIGAN
United States District Judge.

[Endorsed]: Filed Jun 7 1933. [8]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE ADJUDGED GUILTY OF CONTEMPT FOR FAILURE TO COMPLY WITH THE ORDER OF THE COURT.

Upon reading and considering the affidavit of Martin J. Dinkelspiel, duly verified, filed herein on

behalf of plaintiff, and it appearing therefrom that the defendant, Ethlyn B. Clements, has disobeyed the commands of an order heretofore made and entered by this Court whereby the said Ethlyn B. Clements was commanded to pay over to the Clerk of this Court certain trust funds in said order more particularly specified within ten (10) days from service of a copy of said order upon her, and

It appearing, that said order was served upon the said Ethlyn B. Clements, and that more than ten (10) days have expired since the service thereof upon her, and that she has failed and refused to pay over said trust funds or any part thereof to the Clerk of this Court as in said order specified, and it appearing to be a proper case therefor, now upon motion of Dinkelspiel & Dinkelspiel, attorneys for plaintiff,

IT IS ORDERED that Ethlyn B. Clements, individually and as administratrix of the estate of Ralph L. Clements, deceased be, and appear in her proper person before this Court at Room 332 of the Post Office Building, at the corner of Seventh & Mission Streets, in the City and County of San Francisco, State of California, on the 19th day of June, 1933, at the hour of 10 o'clock A.M. of said day or as soon thereafter as counsel can be heard to show cause, if any she has, why she should not be punished for contempt for disobeying said order of this Court made and filed herein on the 22nd [9] day of May, 1933, and served upon her on the 24th day of May, 1933, commanding her to pay over to

the Clerk of this Court certain trust funds in said order more particularly specified.

Service of this order may be made upon said Ethlyn B. Clements by serving a copy thereof, together with a copy of the affidavit in support thereof upon her attorney, Clarence G. Atwood, or by service thereof upon the said Ethlyn B. Clements.

Witness my hand at chambers this 7th day of June, 1933.

FRANK H. KERRIGAN

Judge of the United States District Court.

[Endorsed]: Filed Jun 7 1933. [10]

[Title of Court and Cause.]

ORDER OF IMPRISONMENT FOR COMMISSION OF CIVIL CONTEMPT.

An interlocutory decree having been made and entered by this Court, on the 11th day of June, 1931, impressing an involuntary trust upon certain funds which passed into the hands of the defendant, ETHLYN B. CLEMENTS, both individually, and as administratrix of the Estate of Ralph L. Clements, her deceased husband, in favor of the plaintiff, GEO. W. COPPIN, as Trustee in Bankruptcy of THE FLINTEX CORPORATION; and said matter having been referred by said interlocutory decree to W. E. TUCKER, as Special Master in Chancery for an accounting of trust funds, and that said defendant, ETHLYN B. CLEMENTS,

make true and correct accounting forthwith before said Special Master, and that said Special Master make report thereof to this Court with all convenient speed; and

It appearing that an accounting was taken before said Special Master in Chancery, pursuant to said order of this Court and that the report of the Special Master of said accounting was made and returned to this Court on the 21st day of April, 1933; and that in and by said report, said Special Master found, that the sum of Twenty-two Thousand [11] Five Hundred (\$22,500.00) Dollars of said trust funds passed into her hands individually, and Seven Thousand Two Hundred Fifty-Nine and 12/100 (\$7,259.12) Dollars of said trust funds passed into her hands as administratrix of the estate of her said deceased husband, Ralph L. Clements; and

It appearing in and by said report that said Special Master further found that the sum of Eleven Thousand Nine Hundred Seventy-nine (\$11,979.00) Dollars of said sum of Twenty-two Thousand Five Hundred (\$22,500.00) Dollars, and the sum of Four Thousand Eight Hundred Five and 20/100 (\$4,805.20) Dollars of said sum of Seven Thousand Two Hundred Fifty-nine and 12/100 (\$7,259.12) Dollars, aggregating the sum of Sixteen Thousand Seven Hundred Eighty-Four and 20/100 (\$16,784.20) Dollars of said trust funds remain in her hands and unaccounted for; and

It further appearing that no exceptions have been taken to the report of said Special Master by

either the plaintiff or defendant, and that more than twenty (20) days after the return and filing of the report of said Special Master with the Clerk of this Court, this Court upon motion of the plaintiff, made and entered an order dated May 22nd, 1933, allowing and confirming the report of said Special Master and ordering and directing said defendant, ETHLYN B. CLEMENTS, within ten (10) days from the date of service upon her of said order to pay over said sums of Eleven Thousand Nine Hundred Seventy-nine (\$11,979.00) Dollars and Four Thousand Eight Hundred Five and 20/100 (\$4,805.20) Dollars, said trust funds, to the Clerk of this Court; and

It further appearing that said order directing the payment of said trust funds over to said Clerk was personally served upon the defendant, ETHLYN B. CLEMENTS, on the 24th day of May, 1933; and [12]

It further appearing that plaintiff, GEO. W. COPPIN, as Trustee in Bankruptcy of THE FLINTEX CORPORATION, on the 7th day of June, 1933, filed with this Court and served upon said defendant, ETHLYN B. CLEMENTS, an order to show cause why said defendant should not be adjudged guilty of contempt for her disobedience and willful failure to comply with said order of this Court dated May 22nd, 1933, and that said order to show cause was made returnable on the 19th day of June, 1933, and on said date, said order to show cause having come on regularly for hearing before me, the undersigned District Judge, and that plain-

tiff appeared at said hearing by his counsel, DINKELSPIEL & DINKELSPIEL, and that the defendant ETHLYN B. CLEMENTS, and her counsel, CLARENCE G. ATWOOD, personally appeared at said hearing; and

It appearing that said defendant, ETHLYN B. CLEMENTS, has wilfully disobeyed said order of this court and has willfully failed and refused to pay over to the Clerk said sums of money, said trust funds, as aforesaid, found to be in her hands by said Special Master, or any part thereof, and the Court being fully advised in the premises and it being a proper case therefor,

IT IS ORDERED that ETHLYN B. CLEMENTS, the defendant herein, be, and she is hereby adjudged guilty of contempt of the above entitled Court in her willful disobedience and willful failure to comply with the order of this Court dated May 22nd, 1933.

IT IS FURTHER ORDERED that ETHLYN B. CLEMENTS, said defendant, be, and she is hereby remanded to the Custody of the United States Marshall for this District, to be by him confined in the County Jail, of the City and County of San Francisco, State of California, until the said ETHLYN B. CLEMENTS shall have complied with the order of this Court, [13] ordering and directing her to pay over to the Clerk of this Court the sum of Sixteen Thousand Seven Hundred Eighty-four and 20/100 (\$16,784.20) Dollars, belonging to

THE FLINTEX CORPORATION, bankrupt, or
until the further order of this Court.

Dated: June 19th, 1933.

FRANK H. KERRIGAN,
United States District Judge. [14]

[Title of Court and Cause.]

ORDER OF COMMITMENT TO JAIL
FOR CIVIL CONTEMPT

The Court having heretofore made and entered its order adopting and confirming the report of W. E. Tucker as Special Master in Chancery finding the defendant, ETHLYN B. CLEMENTS, in contempt of this Court in her failure to comply with an order of this court dated May 22nd, 1933,

IT IS ORDERED that ETHLYN B. CLEMENTS, defendant herein, be committed in the custody of the United States Marshall and that she be by him confined in the County Jail in the City and County of San Francisco, State of California, until she complies with the order of this Court directing her to turn over, pay and deposit with the Clerk of this Court the sum of Sixteen Thousand Seven Hundred Eighty-four and 20/100 (\$16,784.20) Dollars, or until further order of this Court;

IT IS FURTHER ORDERED that said United States Marshall shall, upon execution of his order make his return thereof to the Clerk of the above entitled Court on or before June 20th, 1933.

Dated: San Francisco, California, June 19th,
1933.

FRANK H. KERRIGAN,
United States District Judge.

[Endorsed]: Filed June 19, 1933. [15]

District Court of the United States
Northern Division of California
Southern Division

AT A STATED TERM of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 19th day of June, in the year of our Lord one thousand nine hundred and thirty-three.

PRESENT: the Honorable Frank H. Kerrigan,
District Judge.

No. 1874

GEO. W. COPPIN, ETC.,

vs.

ETHLYN B. CLEMENTS, ETC.

After hearing D. K. Lener, Esq., attorney for plaintiff, and C. G. Atwood, Esq., attorney for defendant Ethlyn B. Clements, who was present in court. It appearing that said Ethlyn B. Clements is guilty of contempt of this Court, in failing to comply with the Order of the Court dated May 22, 1933, commanding her to pay over to the Clerk of this Court certain Funds as more fully appears in

said Order; therefore, it is Ordered, adjudged and Decreed that said Ethlyn B. Clements is guilty of contempt of this Court and it is further Ordered that said Ethlyn B. Clements, for such contempt be imprisoned in a County Jail until said Order be complied with or until the further order of this Court. Further Ordered that she be and is committed to the custody of a U. S. Marshall to execute said order of imprisonment and that a Commitment issue, as more fully appears in Order and Judgment this day signed and filed. [16]

[Title of Court and Cause.]

STATEMENT OF COURT ON HEARING OF
ORDER TO SHOW CAUSE IN PROCEED-
INGS FOR CIVIL CONTEMPT.

On the 7th day of June, 1933, the Court issued an Order directing the defendant, **ETHLYN B. CLEMENTS**, to appear on the 19th day of June, 1933, before the above entitled court, and show cause, why she should not be adjudged guilty of contempt for her failure and refusal to comply with the Interlocutory Order of this Court made the 22nd day of May, 1933, directing said defendant, within ten (10) days from the service thereof upon her to pay to the Clerk of this Court, the aggregate sum of Sixteen thousand seven hundred eighty four and 20/100 (\$16,784.20) Dollars adjudged by the Interlocutory Decree made and entered herein on the 26th day of

June, 1931, to be trust funds belonging to the plaintiff, GEO. W. COPPIN, as Trustee of the Flintex Corporation, bankrupt, and found to be in the possession and control of said defendant by an accounting taken before W. E. Tucker, as Special Master in Chancery in his report filed with this court and which was allowed and confirmed by this court, and to which no exceptions or objections were filed by said [17] defendant. Upon said 19th day of June, 1933, the date set in said Order to show cause for the hearing thereof, the defendant ETHLYN B. CLEMENTS, and C. G. ATWOOD, ESQ. her Attorney appeared in court in answer to said Order to show cause and DINKELSPIEL & DINKELSPIEL, ESQS., appeared as Attorneys for plaintiff. That thereupon said Order to show cause duly came on for hearing, and upon a showing made by the plaintiff to the satisfaction of the court that defendant, ETHLYN B. CLEMENTS had been duly served with copies of each Order of May 22nd, 1933, and said Order to show cause, and that defendant had failed and refused within the times set by said Order of May 22nd, 1933, or at all, to pay over to the Clerk of this court, subject to further Order of this court, said trust funds or any part thereof, found to be in her possession and control, called upon the defendant to show cause why she, should not be adjudged guilty of contempt for her failure to comply with the Court's order of May 22nd, 1933, directing her to pay over said trust funds in the manner therein provided. That defendant thru her attorney

of record, C. G. Atwood thereupon stated to the Court that her excuse for non-compliance with said Order of May 22nd, 1933, was her failure to present certain facts in addition to those presented by her on the accounting proceedings before the Special Master, and moved the court for a re-reference in order to allow defendant to present those additional facts to the Special Master for the purpose of accounting to him the disposition of said trust funds. No reason being assigned by defendant's counsel, or by the defendant, why she had not presented any such evidence before the Special Master during the accounting taken before him and prior to the making of the Order of this court under date of May 22nd, 1933, nor why she had not taken any exceptions or made any objections to the report of the [18] Special Master, the court denied the motion for a re-reference. No further evidence of any character being offered by defendant, nor heard by the court in behalf of either party, nor any attempt made to show her inability to pay over said trust fund, or any part thereof as directed by said Order of May 22nd, 1933, before or after the making of said order by the court, nor any showing being made by defendant as to any change in respect to defendant's possession of said trust fund, since the making, or the service of said order of May 22nd, 1933, the Court made its order and decree adjudging the defendant guilty of civil contempt and ordered her committed to the custody of the United States Marshal, to be confined by him in the County

Jail of the City and County of San Francisco, State of California, until she shall have complied with said Order of the court directing her to pay over said trust funds to the Clerk of the court. That pursuant to said order of commitment, defendant was confined in said jail from said 19th day of June, 1933, to and including the 24th day of June, 1933, on which day defendant was released from said jail upon furnishing a bond in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars, after an appeal from said order of commitment of said court to the United States Circuit Court of Appeals had been perfected.

No exceptions or objections were made by defendant, or her counsel to the court's denial of defendant's informal motion for a re-reference to the Special Master, or as against any Order or Decree made, or as against any proceedings taken at the hearing of said order to show cause, nor were any other proceedings taken before this court by defendant, save the appeal taken from the judgment and Decree of contempt herein.

This statement is made by the court in the absence [19] of a record preserved by a court reporter, both parties having failed to ask for a court reporter at the proceedings.

Dated: Sept. 25th, 1933.

FRANK H. KERRIGAN,

U. S. District Judge.

[Endorsed]: Filed Sept. 26, 1933. [20]

This statement of the court may be substituted for the one signed and filed by the court.

DINKELSPIEL & DINKELSPIEL,
Attorneys for Plaintiff.

[Title of Court and Cause.]

PETITION FOR APPEAL.

ETHLYN B. CLEMENTS, individually and as Administratrix of the estate of Ralph L. Clements, also known as R. L. Clements, deceased, in the above entitled case, feeling herself aggrieved by the decree and order entered in the above entitled case on the 19th day of June, 1933, whereby this appellant was committed to the County Jail for failure to pay the clerk of this Court the sum of \$11,971.00 and the further sum of \$4805.20, and until said sum was paid by her; that she has been confined in the County Jail of the City and County of San Francisco ever since the date of said order and is *no* so confined and restrained from her liberty in the custody of the Sheriff of said City and County; that a transcript of the record of the proceedings, papers and exhibits upon which said decree and order is made duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

C. G. ATWOOD,
Attorney for Appellant.

Service of the within petition for appeal is hereby admitted by copy this 23rd day of June, 1933.

DINKELSPIEL & DINKELSPIEL,
Attorneys for Plaintiff.

[Endorsed] Filed June 24, 1933. [21]

[Title of Court and Cause.]

ASSIGNMENTS OF ERRORS.

The defendant, Ethlyn B. Clements, individually and as Administratrix of the estate of Ralph L. Clements, also known as R. L. Clements, deceased, says:

There is manifest error in the record herein and assigns and specifies as such the following:

1. That the United States District Court for the Northern District of California, Southern Division, is and was without jurisdiction to make and enter the order under the date of the 19th day of June, 1933, whereby said defendant was committed to the County Jail of the City and County of San Francisco, in default of her paying the sum of \$11,971.00 and the further sum of \$4805.20; that said order is contrary to the provisions of section 725, of the revised statute of the United States.

2. That the said District Court after issuing an order on this defendant to show cause why she should not be fined for contempt of Court, the defendant filed her answer herein and appeared at the time set for hearing on the order to show cause, to-wit: the 19th day of June 1933; that in said

answer of defendant, she denied that she had in her possession or under her control, the sums of \$11,971.00 and the sum of \$4805.20, or any [22] portion of either of said sums; that the defendant further alleged in said answer that she is unable to comply with the said order of May 22, 1933, which order required this defendant to pay said sums of money into the hands of the Clerk of said District Court within ten days from and after the 22nd day of May, 1933; that although said defendant appeared and filed said answer, the said District Court without giving her an opportunity to show cause why she should not be fined for contempt, thereupon immediately committed her to the said County Jail of the City and County of San Francisco, and that she was not given an opportunity to show cause why she should not be confined for contempt of said court.

3. That the order of commitment, committing the defendant forthwith to the County Jail of the City and County of San Francisco so made and given on the 19th day of June, 1933, was arbitrary, unreasonable and without due process of law.

4. That the order of commitment so made on the 19th day of June, 1933, was in effect and as a matter of fact, an imprisonment for debt and is contrary to the laws of the constitution of the United States.

5. That the defendant clearly showed in her answer her inability to pay said money, and as the alleged contempt was a constructive contempt, and

on the issue as to whether the defendant was able to pay said money, she was entitled to a trial by jury, which trial was denied by the court.

6. That the District Court erred in not giving the defendant an opportunity to offer evidence and in conformity with the order to show cause hereinbefore referred to, that she be permitted to offer evidence and show her inability to pay said money and comply with the order of said Court.

7. That the order made by said District Court on the 19th day of June, 1933, committing this defendant to the County [23] Jail of the City and County of San Francisco is contrary to and in violation of Section 69, of Volume 11, U.S.C.A., page 146, being the provisions relative to Bankruptcy act of the United States.

C. G. ATWOOD,
Attorney for Appellant

Service of the within assignment of errors is hereby admitted by copy this 23rd day of June, 1933.

DINKELSPIEL & DINKELSPIEL,
Attorneys for Plaintiff.

[Endorsed]: Filed June 24, 1933. [24]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

It appearing that the defendant, Ethlyn B. Clements, individually and as Administratrix of the estate of Ralph L. Clements, also known as R.

L. Clements, deceased, has heretofore filed her petition for an appeal from the decree and the order made and entered herein on the 19th day of June, 1933, whereby she was found guilty of contempt and committed to the County Jail of the City and County of San Francisco, to the Circuit Court of Appeals of the United States for the Ninth Circuit,

NOW THEREFORE, IT IS HEREBY ORDERED that the appeal of said defendant to the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby allowed; and

IT IS FURTHER ORDERED that the defendant, in her individual capacity and as administratrix as aforesaid, effect and furnish an undertaking for the purpose of securing the costs of this appeal in the sum of Two Hundred and Fifty Dollars; and an appearance or bail bond in the penal sum of \$2500.00.

Dated: This 24th day of June, 1933.

FRANK H. KERRIGAN,
United States District Judge.

Service of the within order allowing appeal is hereby admitted this day of , 1933.

Attorney for Plaintiff.

[Endorsed]: Filed June 24, 1933. [25]

No. 1453966

THE FIDELITY AND
CASUALTY COMPANY OF NEW YORK

[Title of Court and Cause.]

COST APPEAL BOND.

Know all men by these presents:

That THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, a corporation organized and existing under the laws of the State of New York, is held and firmly bound unto the Plaintiff in the above entitled suit in the just and full sum of TWO HUNDRED FIFTY AND 00/100 (\$250.00) Dollars, for the payment of which well and truly to be made, it binds itself, its successors and assigns.

Sealed with our seals and dated this 26th day of June, 1933.

Whereas, the Defendant, Ethlyn B. Clements, individually and as Administratrix of the Estate of Ralph L. Clements, also known as R. L. Clements, Deceased, is appealing to the United States Circuit Court of Appeals for the Ninth Circuit from a decree and order made in the above entitled suit on the 19th day of June, 1933, and said appeal was allowed by an order of the above entitled Court made on the 24th day of June, 1933;

NOW, THEREFORE, in consideration of the premises and of such appeal, the undersigned, THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, does hereby undertake and promise on the part of the Appellant, Ethlyn B. Clements,

individually and Ethlyn B. Clements as administratrix of the Estate of Ralph L. Clements, also known as R. L. Clements, deceased, that said appellant will pay all damages and costs which may be awarded against her on the appeal, or on a dismissal thereof, not exceeding TWO HUNDRED FIFTY AND 00/100 (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is further stipulated as a part of the foregoing suit that in case of the breach of any condition thereof, the above named District Court, may upon not less than ten (10) days notice to the Surety above named, proceed summarily in the above entitled suit to ascertain the amount which said Surety is bound to pay on account of such breach, and render judgment therefor against said Surety and award execution therefor. [26]

IN WITNESS WHEREOF, the said surety has caused these presents to be executed and its official seal attached by its duly authorized attorney at San Francisco, California, the 26th day of June, 1933.

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK

By: L. F. CALLAHAN
Attorney.

[Seal]

The foregoing bond is hereby approved.
June 26, 1933. FRANK H. KERRIGAN
U. S. District Judge.

State of California

City and County of San Francisco—ss.

On this 26th day of June in the year one thousand nine hundred and thirty three before me J. G. Roberts a Notary Public in and for the said City and County of San Francisco residing therein, duly commissioned and sworn, personally appeared L. F. Callahan known to me to be the Attorney of The Fidelity and Casualty Company of New York, the Corporation that executed the within instrument, and known to me to be the person who executed the said instrument on behalf of the Corporation therein named and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal in the County of San Francisco the day and year in this certificate first above written.

[Seal]

J. G. ROBERTS,

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires October 29, 1933.

[Endorsed]: Filed June 26, 1933. [27]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD
ON APPEAL.

To the Clerk of the above-entitled Court:

Please make up and certify the record on appeal heretofore allowed herein and include in the transcript therein the followin:

1. Interlocutory Order dated May 22, 1933, directing defendant to pay over to the Court \$16,784.20.

2. Answer of defendant to order of May 22, 1933.

3. Order to show cause why defendant should not be adjudged guilty of contempt for failure to comply with the order of the Court, which order to show cause is dated and filed in this court on the 7th day of June, 1933.

4. Affidavit of Martin J. Dinkelspiel, herein, dated the 7th day of June, 1933, and filed herein on said date.

5. The decree and order committing the defendant to the County Jail of the City and County of San Francisco and into the custody of the Sheriff of said City and County, which order of commitment is dated the 19th day of June, 1933.

6. Order of imprisonment for commission of civil contempt, dated June 19, 1933.

7. The minutes of the Court made at the time of the hearing of the order to show cause on June 19, 1933.

8. The Petition for Appeal.

9. The Order allowing the appeal.

10. Cost Bond on Appeal.
11. The assignment of errors.
12. This Praeceptum.

C. G. ATWOOD,
Attorney for Appellant. [28]

Receipt of copy of the within Praeceptum for Transcript of record on appeal is hereby acknowledged this 1st day of July, 1933.

DINKELSPIEL & DINKELSPIEL,
Atty's. for Plaintiff.

[Endorsed]: Filed July 1, 1933. [29]

[Title of Court and Cause.]

PRAECEPTUM FOR ADDITIONAL PORTIONS
OF RECORD TO BE INSERTED IN TRAN-
SCRIPT ON APPEAL

Plaintiff designates the following portions of the record to be incorporated in the transcript on appeal in addition to those enumerated by defendant in her praecipe heretofore filed, to-wit:

1. Statement of court on hearing of order to show cause in proceedings for civil contempt filed September 11, 1933.
2. This praecipe.

Dated: San Francisco, California, September 13, 1933.

DINKELSPIEL & DINKELSPIEL,
Attorneys for Plaintiff.

Service of the foregoing and within praecipe by copy acknowledged this 13th day of September, 1933.

THOMAS F. McCUE,
Attorneys for Defendant.

[Endorsed]: Filed Sept. 14. 1933 [30]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL.

I, WALTER B. MALING, Clerk of the United States District Court, for the Northern Division of California, do hereby certify that the foregoing 30 pages, numbered from 1 to 30, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Geo. W. Coppin, etc. vs. Ethlyn B. Clements, Etc., No. 1874, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$11.05 and that the said amount has been paid to me by the Attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 2nd day of October, A. D. 1933.

[Seal]

WALTER B. MALING,
Clerk.

J. P. WELSH,
Deputy Clerk [31]

[Title of Court and Cause.]

CITATION ON APPEAL

The United States of America, to George W. Coppin, Trustee in Bankruptcy of the Flintex Corporation, a Corporation:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City and County of San Francisco, State of California, within thirty days from the date of this citation, pursuant to an appeal filed in the Clerk's office of the Southern Division of the United States District Court for the Northern District of California, wherein George W. Coppin, as Trustee in Bankruptcy of the Flintex Corporation, A Corporation, is plaintiff and Ethlyn B. Clements, in her individual capacity and as Administratrix of the estate of Ralph L. Clements, also known as R. L. Clements, deceased, is defendant in the above entitled cause, to show cause, if any there be, why the decree and order rendered in said case appealed from should not be revised and corrected and speedy justice should be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. KERRIGAN, United States District Judge for the Northern District of California, this 29th day of June, 1933.

FRANK H. KERRIGAN,
United States District Judge [32]

Service and receipt of copy of the within Citation

on Appeal is hereby admitted this 30th day of June, 1933.

DINKELSPIEL & DINKELSPIEL,

Attorney for Plaintiff.

[Endorsed]: Filed June 30, 1933.

[Endorsed]: No. 7306. United States Circuit Court of Appeals for the Ninth Circuit. Ethlyn B. Clements, individually and as Administratrix of the estate of Ralph L. Clements, also known as R. L. Clements, deceased, Appellant, vs. George W. Coppin, as trustee in Bankruptcy of the estate of the Flintex Corporation, a corp., Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed October 14, 1933.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.